IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

WP(C).No. 9696 of 2007(D)

PETITIONER:

PARVATHY M.K., D/O M.K.KARTHIKEYAN,
B-302, NIWARA, PLOT-50, SECTOR-8A,
AIROLI, NAVI MUMBAI.

BY ADV. SRI.P.N.RAVINDRAN
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.JAYKAR.K.S.

RESPONDENTS:

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1. **MAHATMA GANDHI UNIVERSITY,**
   PRIYADARSHINI HILLS P.O., KOTTAYAM -686 560,
   REPRESENTED BY ITS REGISTRAR.

2. **THE CONTROLLER OF EXAMINATIONS,**
   MAHATMA GANDHI UNIVERSITY,
   PRIYADARSHINI HILLS P.O., KOTTAYAM -686 560.

***ADDL.R3 TO R5 ARE IMPLEADED:**

R3. M.R.UNNI,
REGISTRAR,
MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS P.O.,
ATHRAMPUZHA, KOTTAYAM – 686 560.

R4. DR.THOMAS JOHN MAMBRA,
CONTROLLER OF EXAMINATIONS,
MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS P.O.,
ATHIRAMPUZHA, KOTTAYAM – 686 560.

R5. PONNAPPAN NAIR, ASSISTANT GRADE – I,
EXAMINATION MONITORING CELL – 1,
MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS P.O.,
ATHIRAMPUZHA, KOTTAYAM – 686 560.

(*ADDL.R3 TO R5 ARE IMPLEADED AS PER ORDER DTD.
27/06/2007 IN I.A.NO.8705/07)

BY ADV. SRI. T.A. SHAJI, SC, M.G.UNIVERSITY for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.9696/2007 D

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE HALL TICKET ISSUED TO THE PETITIONER FOR THE M.Sc DEGREE (PREVIOUS) EXAMINATION HELD IN MAY/JUNE 2004 BY THE MAHATMA GANDHI UNIVERSITY.**

EXT.P2: **COPY OF THE CERTIFICATE DTD. 25/01/2006 ISSUED TO THE PETITIONER BY THE PRINCIPAL, MAHARAJA'S COLLEGE, ERNAKULAM TOGETHER WITH THE ANNEXURE THERETO.**

EXT.P3: **COPY OF THE REPRESENTATION DTD. 28/12/2006 SUBMITTED BY THE PETITIONER'S FATHER TO THE PUBLIC RELATIONS OFFICER, MAHATMA GANDHI UNIVERSITY, KOTTAYAM.**

EXT.P4: **COPY OF THE MEMO DTD. 15/01/2007 ISSUED BY THE CONTROLLER OF EXAMINATIONS, MAHATMA GANDHI UNIVERSITY TO THE PETITIONER'S FATHER.**

/TRUE COPY/

P.S.TO JUDGE

KSS

ANTONY DOMINIC, J.

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W.P.(C) No. 9696 OF 2007 D
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Dated this the 4th October, 2007

J U D G M E N T

The petitioner was a private study candidate for M.Sc. Degree Course in Physics (Non-Conventional Energy) during the academic year 2000-02. She appeared for the M.Sc. Degree Examination in May/June 2001 and the M.Sc. Degree Final Examination in May/June 2002 with register No. 40323. In the previous examination the petitioner failed in all the five papers of the M.Sc. Degree (Previous) Examination held in May/June 2001, but passed all the five papers in the M.Sc. Degree Final Examination held in May/June 2002. She again appeared for all the five papers in the M.Sc. Degree (Previous) Examination held in May/June 2002, but failed in the examination. She repeated again in 2004 and Ext. P1 is the hall ticket that was issued for the 2004 examination. This time the centre of examination was Maharaja's College, Ernakulam and the petitioner's register number was 6161. However, in the result that was declared she was shown to be absent for

Paper II, Statistical Physics, Optics and EM Theory.

2. Thereupon the petitioner made enquiries and in order to contradict the records of the respondents, she obtained Ext. P2 certificate issued by the Principal, Maharaja's College. The certificate is to the effect that she had appeared for the examination held in June, 2004 and the answer scripts of the candidates were forwarded to the University. When she made representations to the University for declaration of the results, by Ext. P4 she was informed that the request of the petitioner was under consideration. As there was no progress in the matter, she filed this writ petition praying for a direction to the respondents to publish her result of the M.Sc. Degree (Previous) Examination in Physics held in June/July 2004.

3. The University filed a statement on 8-6-2007. It is stated in paragraph 3 of the statement that it was presumed that she had not appeared for the Physics papers and it was therefore that when the result was published she was declared failed in the examination. In paragraph 7 of the statement it is stated as

follows:

> "In the above circumstances, the committee came to the finding that the packet containing the answer script C-4849-A was lost either on the way to the University or after having reached the University. It was also observed by the Committee that the loss of the answer script may be due to carelessness or with the deliberate intention of helping the student. So the committee did not accept the recommendation that, average marks of the other written papers may be given to the 'lost' paper and Miss. Parvathy may be declared as passed. The Committee further opined that a detailed enquiry was required to find out the details regarding the loss of the answer script. Certain suggestions were also made by the committee so as to ensure that no such lapses happen in future."

4. From this it is evident that the University could not have been more negligent in the case of the petitioner. Paragraph 7 of the statement reveals that while carelessness has been accepted as one of the possibilities, without any basis it is concluded that the loss of answer scripts may be with the deliberate intention of helping the student. I asked the learned Standing Counsel for the University a specific question as to on what is the basis on which this conclusion has been arrived at and no satisfactory answer could be given. In these circumstances, I can only hold that

the conclusion of the Committee which has been accepted by the University is nothing but perverse.

5. A reading of the statement further shows that it is on the aforesaid conclusion that the Committee did not accept the recommendation that average marks of the other written papers need not be given to the petitioner. I should also mention that the respondents are not disputing the case of the petitioner that this is a system of giving average marks in a situation like this. Since the basis on which the recommendation was not accepted is perverse, I should hold that the petitioner is entitled to be given average marks of the other papers for the lost paper also. Therefore, I direct the respondents that the petitioner shall be given the average marks of the other written papers, for the paper in Physics also. This, the respondent shall do as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

6. At one stage of the hearing the learned counsel for the University suggested that a separate examination can be held for the petitioner. This was

considered by me and I am of the view that this is an impractical suggestion. From the facts of the case it is evident that the petitioner had completed her course way back in 2002 and she had competed her course in 2004. She having settled down in her life and at this distance of time I do not think, it is fair to ask the petitioner to sit for the examination once again especially when all these have happened only on account of the fault and negligence on the part of the University.

Writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-